Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	)	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141

COMMENTS OF CONVERSENT COMMUNICATIONS, LLC

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Conversent Communications, LLC ("Conversent" or the "Company"), by its attorneys, hereby files these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding that was released by the Federal Communications Commission ("Commission") on November 19, 2001.[1]

DISCUSSION

Conversent is a privately held, recent start-up company that is currently providing local voice and data services to small and medium sized business customers in second and third tier urban markets in Massachusetts, Rhode Island, New Hampshire, Maine, Connecticut, New York,

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[1] *See Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, FCC 01-331 (rel. Nov. 19, 2001) ("NPRM").

and New Jersey. Conversent has found that it can efficiently provide local voice service to these customers by relying on its own switches, collocated transmission equipment, unbundled loops, and dark fiber interoffice transport.

By collocating in ILEC central offices, Conversent is able to order unbundled loops to reach end-user customers. CLECs such as Conversent that use this entry strategy typically order unbundled 2-wire analog loops in order to provide basic voice telephone service to the customer. As an operational matter, when Conversent wins a voice customer from an ILEC, the ILEC must perform a "hot-cut." This entails disconnecting a customer's existing service, reconnecting the loop that is cross-connected to the CLEC's facilities, undertaking the associated translations work in the ILEC's switch, and porting the customer's telephone number to the CLEC.

In order to have a meaningful opportunity to compete, Conversent must be able to rely on the ILEC to schedule and complete hot-cuts within a commercially reasonable standard cutover window. To ensure that there is no service disruption to the end-user, Conversent and the ILEC must coordinate the scheduled conversion time in advance of the due date, and the ILEC must agree to do the wiring work and translations work within the standard window.

In Conversent's experience, Verizon has scheduled, coordinated, and completed hot-cuts in a manner that offers Conversent a reasonable opportunity to compete. Moreover, the on-time hot-cut provisioning measurement that Verizon and the relevant state regulatory commissions have included in the Performance Assurance Plans and Carrier to Carrier Guidelines in the states where Verizon has received or is seeking 271 approval are also generally reasonable.

The Verizon metric that applies to the provisioning of hot-cuts is PR-9-01, "% on time performance-hot cut." A copy of this metric is attached to these Comments as an Exhibit.[2] Pursuant to this measurement, a hot-cut is considered complete when work is performed during the appointed frame due time or "FDT" (*i.e.*, the time when the cutover work is to begin) as set forth on the Local Service Request Confirmation or the work is performed at a time otherwise mutually agreed upon by Verizon and the CLEC. The FDT must be scheduled either on a day that falls within a prescribed interval, as noted in the Carrier-to-Carrier Guidelines (within 5 days for orders of 1-5 loops), or that falls on a day that is mutually agreed upon by Verizon and the CLEC. If Verizon fails to keep its commitment to perform the cutover on the agreed upon date and time or fails to complete the physical cutover of lines within the cutover window (one hour for orders of 1-9 lines) 95 percent of the time, then Verizon fails to comply with PR-9-01 and is subject to a penalty.

As applied by Verizon, the hot-cut measurement and the associated business rules have offered Conversent a reasonable opportunity to compete. This is not to say that the Verizon measurement and business rules are perfect by themselves. For example, the standard cutover window of one hour for orders of 1-9 lines is not optimal. A shorter window would be more appropriate for such orders. In practice, however, Verizon has typically completed the cutover of orders with small numbers of lines in much less than an hour. This is because, on the day of the scheduled cutover, Verizon calls Conversent at least one hour prior to the scheduled cutover time to confirm that the cutover will in fact begin as scheduled. In addition, Verizon also calls Conversent when the ILEC's portion of the cutover work has been completed. This practice, as

[2] The version of the metric attached is from New York, but Verizon has adopted the same measurement in most of the states in which Conversent operates.

much as the measurement itself, has allowed Conversent to function as a viable competitor. Ideally, the rules themselves would be improved to include shorter intervals for smaller orders. Indeed, Conversent encourages the Commission to adopt best practices from other ILEC regions that include this and other appropriate improvements on the Verizon measurement. But at a very minimum, all states must be required to adopt at least the Verizon metric PR-9-01 as a floor that defines acceptable ILEC performance for completing hot-cuts.[3]

Establishing such a floor will provide much needed regulatory certainty for CLECs, like Conversent, that operate in multiple ILEC territories.[4] Such a national floor would also diminish the likelihood that ILECs would be forced to comply with varying business rules, measurements, and standards. This is because Conversent anticipates that most state commissions would adopt the national standard.

Conversent is concerned that, if the Commission does not define minimum national performance measurements and standards for hot-cuts, facilities-based competition will simply not develop in states that have not themselves established adequate rules. Indeed, absent clear and reasonable measurements and standards, an ILEC will likely refuse to schedule cutover windows within a reasonable interval, refuse to confirm in advance the scheduled due time, refuse to perform the wiring and translations within a standard window, refuse to notify the CLEC when the wiring and translations work has been completed, or seek to charge extra for meeting either of these basic CLEC business needs.

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[3] To the extent the Verizon's PR-9-01 hot-cut metric does not expressly reflect the 5 day interval for scheduling and completing hot-cuts, it should be expressly provided.

[4] The Commission should allow states to establish higher standards *in lieu* of the national minimum requirements.

Conversent's concerns are not hypothetical. For example, the Southern New England Telephone Company ("SNET") offers CLECs two processes for performing hot-cuts: a so-called "basic" uncoordinated hot-cut process to which TELRIC-based rates apply and a so-called "premium" coordinated hot-cut process to which non-TELRIC based rates apply.[5] SNET's uncoordinated hot-cut process does not work. The reason that it does not work is that, in this process, SNET has refused to confirm in advance a mutually agreeable time of day to perform the hot-cut and has refused to complete the hot-cut within a reasonable window from the scheduled time.[6] As a result, on the day of the scheduled hot-cut, Conversent does not know whether its new customer's service will be disconnected at 9:00 a.m., 10:00 a.m., or 11:00 a.m. Because Conversent does not know when the ILEC portion of the hot cut work will begin and end, Conversent cannot know how soon it can begin the work required to port the customer's numbers. Absent this porting, the customer cannot receive any calls. Moreover, because of the lack of coordination in the SNET "uncoordinated" cutover process, customer migrations that

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[5] See the Southern New England Telephone Company Connecticut Access Service Tariff, §§ 18.k, 18.k(3) at http://www.dpuc.state.ct.US/REG.nsf/…/3b8e3293bof57bb2852563090044c5de?OpenDocumen (classifying the coordinated cutover process as a "premium" service that is "not essential to the customer's provisioning of telecommunications service") ("SNET Access Tariff"); *Petition of MCI WorldCom, Inc. For A Declaratory Ruling Regarding The Southern New England Telephone Company's Non-Recurring Charges*, DPUC Docket no. 99-02-07, Decision at 16 (Dec. 15, 1999) (describing the methodology for setting prices applicable to premium services as TSLRIC plus a markup of 25 percent based on the conclusion that such pricing was appropriate for services that were "nonessential to CLECs service offering" [sic]).

[6] It is Conversent's understanding that SNET does have a two hour window for hot cuts as part of its basic uncoordinated process. Of course, a two hour window is far too long to support competition, and the industry norm has now become one hour. *See, e.g., Application by SBC Communications, Inc., Southwestern Bell Telephone Communications, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 264 (2000) ("Texas Order") (applying one hour standard). More importantly for present purposes, even if it were not too long, the SNET basic cutover process window is utterly unhelpful to CLECs. This is because SNET will not, as part of the basic process, confirm in advance when hot cut work will actually begin, and it will not, as part of that process, confirm when the work has been completed.

should result in a disconnection of service for a matter of seconds or minutes, instead routinely result in the customer losing telephone service for several hours.

As a result of the above-described problems with the uncoordinated SNET hot-cut process, Conversent has been forced to rely exclusively on SNET's "premium" coordinated cutover service. Indeed, it is Conversent's understanding that no CLEC uses SNET's basic uncoordinated cutover process to support commercial volumes of orders. Unfortunately, SNET's charges for coordinated cutover service are unreasonably high when compared to the installation charges of other ILECs and constitute an impermissible barrier to entry.

The extent of this barrier can be illustrated by comparing the Verizon Connecticut coordinated cutover charges with the SNET charges for its coordinated cutover service. When Conversent wins a Verizon-Connecticut customer in the Verizon-Connecticut service area, Verizon performs a coordinated hot-cut at TELRIC-based rates: there is a central office wiring charge of $4.39 and a service connection charge of $10.17. These charges are in Verizon-Connecticut's Tariff (about $15.00 per loop). When Conversent wins a SNET customer and asks SNET to perform a coordinated hot-cut, the very least that Conversent will pay is a coordinated cutover charge of $131.40 plus $29.42 for the first loop and $10.19 for additional loops.[7] Recently, SNET has also back-billed Conversent for significant additional labor charges for coordinated hot cuts. Even excluding these labor charges, for a single line customer in Stamford Connecticut, Conversent pays SNET $160.00 for a coordinated hot-cut and for a single line customer in Greenwich Connecticut, Conversent pays Verizon-Connecticut only about $15.00. Both of these carriers have the same obligation to provide unbundled loops on just and

[7] *See SNET Access Tariff*, original p. 18-39c, Section 18.6.1, 7th Revised Page 18-42, Section 18.6.2.1.

reasonable rates, terms, and conditions under Section 251(c)(3) of the Act. Both of these carriers have the obligation to provide access to UNE loops at TELRIC rates. Yet, one of them charges more than ten times what the other charges for access to an unbundled loop by way of a coordinated hot-cut.

In many cases, the differential between the SNET and Verizon-Connecticut rates is even more significant for coordinated hot-cuts. For example, if SNET requires Conversent to order what it calls a "complex loop," and sometimes it does, the charge is $337.48 for the coordinated cutover charge plus $179.01 for the first loop and $101.81 for each additional loop.[8] For a single line customer, again excluding back-billed labor charges, SNET charges over $500.00 in non-recurring charges for a coordinated hot-cut of a customer served by a complex loop.

The reason why SNET has been allowed to charge such high prices for its coordinated conversion process is that it has succeeded (thus far) in convincing the DPUC that the level of coordination included in that process goes beyond the requirements of Section 251(c). It is this conclusion that has formed the basis for the DPUC's decision to allow the coordinated process to be classified as a "premium" service. But this is simply not the case. The statute unquestionably requires a high level of coordination in hot-cut processes.

It is now well established in the FCC's Section 271 orders that, in order to meet its obligation to provide hot-cut loops in compliance with the requirements of the statute, an ILEC must demonstrate that it consistently and successfully performs cutovers within a designated cutover window. In the New York Section 271 order, the Commission held that an ILEC can meet the "minimally acceptable" performance for complying with the statutory requirements

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[8] *See id*., original page 18-39c, Section 18.6.1, 3rd Revised Page 18-42.2, Section 18.6.2.1.

only if (1) 90 percent of its hot cuts are completed within the one hour cutover window for orders with fewer than 10 lines, (2) fewer than five percent of its hot cuts result in unplanned service outages, and (3) fewer than two percent of its hot cut lines report installation troubles within a reasonable time period after the cutover is completed.[9]

For present purposes, the most important of these criteria is the requirement that no more than 5 percent of hot cuts results in ILEC-caused unplanned service outages. Unlike the Verizon coordinated hot cut process, which critically includes the requirement that a cutover be established on an agreed-upon date and time in advance and which, in practice, includes confirmation before the cutover begins and when it is completed, SNET's basic uncoordinated service is systemically incapable of meeting this standard. In the absence of some form of coordination (whether by telephone call or via reliable electronic notification), it is simply impossible for a CLEC to perform its part of the cutover work in time to avoid excessive service disruptions. Thus, by definition, the basic SNET uncoordinated cutover process cannot meet the statutory requirements. Only SNET's coordinated process includes the coordination needed to meet the relevant standard. Thus, SNET leaves CLECs with a Hobson's choice: opt for the baseline service and endure hot cut service outage levels that cannot support competitive entry or opt for the "premium" service and pay rates that cannot support competitive entry.

The SNET approach is therefore fundamentally different from the cutover processes offered by its affiliate SWBT in Texas. SWBT, like SNET, offers both a coordinated hot-cut

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9 *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 309 (1999). As explained above, Conversent believes that a 95 percent standard for ILEC on-time completion of hot cuts is more appropriate.

("CHC") process and an uncoordinated frame due time ("FDT") hot-cut process.[10] In the Texas Section 271 order, the Commission found that SWBT had failed to comply with the statutory requirements for providing access to unbundled loops under the FDT process. This was because that uncoordinated process resulted in too many service disruptions during the cutover process as a direct result of inadequate coordination. *See id.* ¶¶ 261, 267-273. Only the CHC process included an adequate level of coordination, as was demonstrated by the fact that fewer than 5 percent of the CHC cutovers resulted in ILEC-caused end-user service outages. *See id.* ¶ 270. Since SWBT made "both the CHC and FDT hot cut processes equally available to competing carriers" (that is, since the CHC process was treated in all respects, including price, as a basic service intended to comply with SWBT's statutory obligations), the Commission found that SWBT could rely on the CHC to demonstrate its compliance with the requirements of the Act. Given the applicable price, no such conclusion could be reached with regard to SNET's coordinated cutover process.

The example of SNET demonstrates that all ILECs must be required at the very least to provide a cutover process that contains adequate coordination (whether by telephone or reliable electronic communication) to support efficient hot-cut performance. The Verizon performance measurements as written and applied offer such a baseline set of requirements. By defining the bare minimum requirements for ILEC statutory compliance, national rules would require, for example, that SNET provide to CLECs a cutover process that (applying the standard suggested herein) ensures that 95 percent of cutovers for orders with 1-9 lines are completed within a one hour cutover window to be scheduled at an agreed upon time. Moreover, such rules should at

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[10] *See* Texas Order ¶ 264.

least specify that the ILEC must (1) notify the CLEC on the day of the cutover that the work will be performed as scheduled, and (2) promptly notify the CLEC when the work has been completed so that the CLEC can then activate the NPAC and port a customer's number. With this small, but critical amount of mandated cooperation, migrating customers will experience little or no disconnection in telephone service, and competition can develop. Without it, customers will often lose service for several hours, and completion will never develop.

CONCLUSION

For the reasons provided herein, the Commission should adopt baseline national hot-cut performance rules that apply in states that have not adopted adequate performance rules of their own.

Respectfully submitted,

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EXHIBIT

Function:

PR-9 Hot Cut Loops

Methodology:

This metric measures the percent on-time performance for UNE Hot Cut Loops.
A Hot Cut is considered **complete** when the following situation occurs:

Work is done at the appointed Frame Due Time (FDT) as noted on the LSRC or the work is done at a time mutually agreed upon by the RCCC/CLEC. The time is either within a prescribed interval as noted in the C2C guidelines, or it is a mutually accepted interval agreed upon by Verizon and the CLEC (*e.g. project completes by a certain date*).

Note: If Verizon re-institutes the acceptance testing process, the percent on time measure will include the time it takes to complete acceptance testing.

A Hot Cut is considered **missed** when one of the following occurs:

1. Premature disconnect called in to 1-877-HotCuts (otherwise the disconnect would be captured as a Retail trouble).
2. Work was not done (*e.g. work was not turned up to CLEC by some means (e-mail, VMS, direct phone call)*) by close of intervals noted under *Met Hot Cuts* definition due to a Verizon reason (*e.g. HFC, late turn-up, due date pushed out due to Verizon action*).

Exclusions:

- VZ Test Orders
- Verizon Administrative orders
- Additional segments on orders (parts of a whole order are included in the whole)
- Orders that are not complete. (Orders are included in the month that they are complete)
- If a CLEC cancels an order before the start of a Hot Cut window and VZ performs the Hot Cut, this VZ error will result in a retail trouble report and need not be reflected elsewhere.

From PR-9-09 % Supplemented or Cancelled Orders at Verizon New York request:

- Hot Cuts where no CLEC dial tone was found on DD-2 test and the CLEC was notified of problem
- Hot Cuts where CLEC dial tone was found on DD-2 test and not present on the DD.

Performance Standard:

Hot Cuts:
PR-9-01: 95% completed within window
PR-9-08: No standard

Standard for Cut-Over Window: Amount of time from start to completion of physical cut-over of lines:

one (1) to nine (9) lines: one (1) Hour
10 to 49 lines: two (2) Hours
50 to 99 lines: three (3) Hours
100 to 199 lines: four (4) Hours
200 plus lines: eight (8) Hours

If IDLC is involved – Four (4) hour window (8:00AM to 12:00PM (Noon) or 1:00PM to 5:00PM)[22]. Four (4) hour window applies to start time.

Report Dimensions

Company:	Geography:
• CLEC Aggregate • CLEC Specific	• New York

[22] Only applicable if Verizon New York notified CLEC by 2:30PM Eastern Time on DD-2 that the service was on IDLC

Sub-Metrics – Hot Cut Loops		
PR-9-01	**% On Time Performance – Hot Cut**	
Description	Percent of all UNE Loop orders completed within the cut-over window. Start time specified on LSR. For UNE Loops, includes both Loop only and Loop & Number Portability. Orders disconnected early, and orders cancelled during or after a defective cut due to Verizon reasons are considered not met.	
Products	UNE: • Loop – Hot Cut (Coordinated Cut-over)	
Calculation	**Numerator**	**Denominator**
	Number of Hot Cut (coordinated loop) orders (with or without number portability) completed within commitment window (as scheduled on order) on DD.	Number of Hot Cut (coordinated loop orders) completed.
PR-9-02 through PR-9-07	**Metrics not in use in Verizon North**	

Sub-Metrics – Hot Cut Loops (Continued)		
PR-9-08	**Average Duration of Service Interruption**	
Description	The average repair time (Mean Time to Repair - MTTR) for troubles called in to the 1-877-HotCuts line (Installation troubles)	
Calculation	**Numerator**	**Denominator**
	The sum of the trouble clear date and time minus the trouble receipt date and time for Central Office and Loop troubles (disposition codes 03, 04, and 05) for HotCut Installation troubles reported within seven (7) days.	Number of Central Office and Loop troubles (disposition codes 03, 04, and 05) for HotCut Installation troubles reported within seven (7) days.
PR-9-09	**Metric Not in Use in Verizon North**	